



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

TO: Barry E. Hill, Director, Office of Environmental Justice ("OEJ")
Office of Enforcement and Compliance Assurance ("OECA")

FROM: Theodore J. Kim, Legal Counsel, OEJ/OECA /s/ *Ted Kim*

DATE: March 15, 2007

RE: "Environmental Justice in the News" for the Week Ending March 16, 2007

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This memorandum summarizes select environmental justice news actions for the period beginning March 5, 2007 through the week ending March 16, 2007. The summary is limited to Lexis/Nexis searches conducted using the query: "(environment! w/2 (justice or racism or equity or disproportionate or disparate)) or (environment! w/25 minorit! or low***income) or (executive order 12898) or (civil right! w/25 environmental) or ("fair housing act" w/25 (environment! or zon!))." Please note that articles on international or foreign-based environmental justice issues were not included.

1. **News Items.**

The following news was particularly noteworthy:

- **"Group Pushes for Air Pollution Measures," Asbury Park Press (N.J. Mar. 8, 2007).** According to the article, the New Jersey Environmental Justice Alliance ("Alliance") asserted on March 7, 2007 that "New Jersey needs to do more to reduce diesel and fine particle air pollution, especially for the health of those living near high concentrations of the asthma-causing particles." Specifically, the Alliance called on New Jersey's Department of Environmental Protection to require "diesel-powered vehicles used to fulfill state contracts to be retrofitted with clean emission technology, to enforce diesel-powered vehicles idling laws, and to accelerate efforts to reducing diesel emission in 'hot spots.'" Such actions are important due to the belief that the exposures "are concentrated in urban areas, [and] minorities and people of lower income are 'disproportionately impacted.'"

- **“New TRI Data Limits May Prompt Major Decline in EPA Risk Estimates,” Clean Air Report (Mar. 8, 2007).** According to the article, a rule that scales back the United States Environmental Protection Agency’s (“EPA”) requirements under the Toxic Release Inventory (“TRI”) program will result in “significant decreases in Agency estimates of national environmental and human health risks, even though EPA and a congressional study say total reported releases will decrease by only 1 percent.” Democrats are opposed to the rule and may “block EPA from implementing the scaled-back TRI reporting requirements, possibly as part of EPA’s fiscal year 2008 spending legislation.” The article noted that alterations to EPA data on potential risks, such as EPA’s Risk-Screening Environmental Indicators (“RSEI”) tool which solely relies on TRI data, “are significant because federal, state, and local regulators use the data to set enforcement and air monitoring priorities.” The RSEI tool is used for environmental justice analysis of federal facilities and “[i]ndustry sector- and facility-based targeting and strategic planning by several EPA offices.”
- **“Call for Presentations for April 17 Environmental Summit,” US States News (Mar. 8, 2007).** The article set forth a news release from Western Illinois University, which announced that it will host the fourth annual Environmental Summit on April 17, 2007. The theme of the summit will be Environmental Justice and will focus on “the relationship between the environment and social and economic issues of sustainability in ways relevant to residents of West Central Illinois, as well as other rural and urban communities.” The featured speaker will be Majora Carter, the Executive Director of Sustainable South Bronx.
- **“Trash Decision Reopens Wounds: County Must Decide Where to Locate New Solid-Waste Building,” Chapel Hill News (N.C. Mar. 7, 2007).** According to the article, the proposed construction of a waste-transfer station on a landfill site in Carrboro, North Carolina has caused consternation from the residents. The landfill was opened near a predominantly black neighborhood 35 years ago, which the article noted raised environmental justice issues. Policy makers assert that they take environmental justice “seriously” but they also take seriously their “public health obligations to dispose of waste safely.”
- **“Council Wants More Wetland; Mayor Refuses Areas that Feed Hamm Creek at Issue,” Seattle Post-Intelligencer (Mar. 6, 2007) at B2.** According to the article, the Seattle City Council urged Seattle’s Mayor to try to do more to rectify damage to the wetlands that feed Hamm Creek; however, sources to the Mayor articulate that he does not intend to take the advice. The Council believes that the destruction of the wetlands represents an [unspecified] environmental justice issue.

- **“Environmental Group Seeks Justice for Poor; Anti-Pollution Policy Not Followed, Activists Say,” Columbus Dispatch (Mar. 3, 2007) at 3D.** According to the article, environmental groups in Ohio are urging the state to “do more to protect poor and minority communities from pollution.” In addition, the groups are also seeking the help of residents. At a forum held on March 3, 2007, the groups began a statewide push for environmental justice. One specific item that the groups seek is for “state environmental officials . . . to weigh pollution from all nearby businesses before they approve construction of new factories or renew permits for existing plants.”
- **“Developer of 395 Lynnway Penalized \$35,000 by Massachusetts Department of Environmental Protection,” US States News (Mar. 2, 2007).** The article set forth a press release from the Massachusetts Department of Environmental Protection (“DEP”) that announced that DEP had “entered into a consent order with a \$35,000 penalty involving 395 Lynnway LLC, the owner of the property in Lynn. The corporation was penalized for failing to complete the cleanup of a property, which is currently undergoing redevelopment for commercial use. Cleanup of contaminants (including petroleum, vinyl chloride, and naphthalene) that was first reported on October 29, 1999 on the site has not yet been completed.” The property in question was located in an environmental justice community. Environmental justice areas “encompass only a small portion of the land area of the Commonwealth (less than 5 percent), but they are home to a large percentage of the State’s population (nearly 29 percent).”
- **“AB 32 Panel Weighs GHG Auctioning, Market Failures, EJ Issues,” Inside Cal/EPA (Mar. 2, 2007).** According to the article, the Market Advisory Committee (“MAC”) met publicly for the first time on February 27, 2007 regarding the implementation of AB 32, California’s climate change law. Governor Arnold Schwarzenegger created the MAC through an Executive Order in 2006 to “recommend how California should craft a market-based strategy to reduce GHG emissions.” Among the topics the MAC addressed was the role of credit trading on environmental justice impacts. Specifically, environmental justice activists were concerned that credit trading would not result in any “‘bottom-line air pollution reduction,’ particularly in low-income areas. Activists worry the problem might lead to further creation of ‘hot spots,’ or areas near low-income communities where high-polluting industries coalesce.” However, one member of the MAC doubted that credit trading would negatively impact environmental justice communities. Instead, he stated that a “market-based program, as well as other regulations called for in AB 32, are much more likely to reduce the intensity of all emissions near EJ community hot spots.”

- **“House Bill Seeks to Fill EPA Environmental Justice Health Data Gaps,” Inside EPA (Mar. 1, 2007).** According to the article, Congresswoman Hilda L. Solis (D-CA) is “pushing legislation to ensure that [EPA] and other agencies gather health effects, exposure and other data necessary to address concerns that pollution is disproportionately harming low-income and minority communities.” Congresswoman Solis had previously introduced H.R. 398, which was a bill “intended to fill current data gaps on environmental health effects in low-income communities that could be used by EPA to make environmental justice determinations.” H.R. 398 would “create programs to collect cumulative data on health effects and exposure pathways in environmental justice communities . . . to ‘inform regulatory decision-making at EPA.’” Among other things, the bill would create an interagency working group that would discuss environmental health concerns disproportionately affecting disadvantaged populations.
- **“EPA Study on Cleanup Gentrification Effects May Reignite EJ Debate,” Environmental Policy Alert (Feb. 28, 2007).** According to the article, a report released in January entitled, “Moving Beyond Cleanup: Identifying the Crucibles of Environmental Gentrification,” “recommends that redevelopment that is consistent with past uses of contaminated land can limit the gentrification effects of cleanups.” However, members of the National Environmental Justice Advisory Council (“NEJAC”) note that “it will be likely difficult to redevelop a contaminated property to make the future use consistent with the former use.” The NEJAC had previously recommended that EPA address the “cumulative impacts” of contaminated properties, as well as the potential for gentrification. In doing so, the NEJAC acknowledged, however, that it was “not fair to suggest that federal redevelopment and revitalization programs are purposefully causing unintended impacts such as gentrification, displacement, and equity loss in environmental justice communities.”
- **“Alliance Targets Diesel Pollution,” Connecticut Post Online (Feb. 28, 2007).** According to the article, a new report released on February 28, 2007 by the Clean Air Task Force has caused a coalition of environmental groups to urge “State officials to do more to curb diesel pollution.” The report found that the “daily commute is a significant source of exposure to harmful diesel fuels,” as “the commute typically accounts for 60 percent of a commuter’s exposure to diesel pollutions.” Environmental justice groups believe that the report is significant and note that places such as Bridgeport, Connecticut, which has a high incidence of asthma, “has been associated with fine-particulate pollution from diesel engines.”
- **“Environmental Justice Focus on UM Fund,” Flint Journal (MI Feb. 26, 2007) at A4.** According to the article, Professor Bunyan Bryant of the University of Michigan will donate \$100,000 over the next five years “to set up an endowment fund for environmental graduate studies at the Ann

Arbor University.” Professor Bryant, a founding force of the environmental justice movement, “hopes his donation will serve as seed money to contribute to the cause. At least \$6 million is needed to create an environmental justice center.” Currently, Professor Bryant’s students are studying the effects of an oil spill that Hurricane Katrina caused on low-income residents.

2. **Recent Litigation.**

- No noteworthy “*Recent Litigation*” was identified for this time period.

3. **Regulatory/Legislative/Policy.**

The following items were most noteworthy:

A. **Federal Congressional Bills and Matters.**

- No noteworthy “*Federal Congressional Bills and Matters*” were identified for this time period.
- No noteworthy “*Miscellaneous House and Senate Congressional Record Mentions of Environmental Justice*” were identified for this time period.

- **Federal Register Notices.**

— **EPA, Prevention of Significant Deterioration (“PSD”) and Nonattainment New Source Review (“NSR”): Reasonable Possibility in Recordkeeping, 72 Fed. Reg. 10,445 (Mar. 8, 2007).** EPA proposed to revise regulations that govern the new major NSR programs that parts C and D of Title I of the Clean Air Act (“CAA”) mandate. Specifically, the proposed rule, which seeks comments before May 7, 2007, “clarify the ‘reasonable possibility’ recordkeeping and reporting standard of the 2002 NSR reform rules. The ‘reasonable possibility’ standard identifies for sources and reviewing authorities the circumstances under which a major stationary source undergoing a modification that does not trigger major NSR must keep records. The standard also specifies the recordkeeping and reporting requirements on such sources.” With regard to environmental justice, EPA “determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed rule provides explanation of an existing recordkeeping and reporting standard.”

— **EPA, Nonattainment New Source Review (“NSR”), 72 Fed. Reg. 10,367 (Mar. 8, 2007).** EPA announced its finalization of

revisions to the regulations that govern the nonattainment NSR program. The revisions “implement changes to the preconstruction review requirements for major stationary sources in nonattainment areas in interim periods between designation of new nonattainment areas and adoption of a revised State Implementation Plan (“SIP”). The revisions conform the nonattainment permitting rules that apply during the SIP development period following nonattainment designations before SIP approval to the Federal permitting rules applicable to SIP-approved programs. The changes are intended to provide a consistent national program for permitting major stationary sources in nonattainment areas under section 110(a)(2)(C) and part D of title I of the [CAA].” With regard to environmental justice, EPA noted that the final rule will not have a disproportionately high and adverse human health or environmental effect on minority and low-income populations. Rather, the rule “will result in equal or better environmental protection than provided by the prior regulations, and do so in a more streamlined and effective manner.”

B. **State Congressional Bills and Matters.**

- **California, Assembly Bill 1107, introduced on February 23, 2007 by Congressman Juan Arambula (D-District 31). *Status: Read First Time on February 26, 2007.*** The Bill amends Section 65072 of, and adds Section 15571 to, the Government Code relating to transportation. Specifically, the Bill requires the establishment of an advisory committee to help assess the shipping needs and practices of small businesses and microenterprises. The committee shall, among other things, assess statewide and regional opportunities for small businesses and microenterprises “to participate in the State’s goods movement logistics sector, including a review of how these entities may assist in the implementation of environmental justice policies of goods movement.” The committee shall prepare a report to the Governor and the Legislature by January 1, 2009.
- **California, Assembly Bill 1358, introduced on February 23, 2007 by Congressman Mark Leno (D-District 13). *Status: Read First Time on February 26, 2007.*** The Bill amends Sections 65050.2 and 65302 of the Government Code, relating to planning. Specifically, the Bill establishes in the Office of the Governor the Office of Planning and Research “with duties that include developing and adopting guidelines for the preparation of and content of mandatory elements required in city and county general plans.” Among other things, the guidelines shall address environmental justice matters.

- **California, Senate Bill 162, introduced on January 30, 2007 by Senator Gloria Negrete McLeod (D-District 32). Status: Rereferred to Senate Committee on Appropriations on March 8, 2007.** The Bill amends the list of factors “that a local agency formation commission is required to consider in the review of a proposal for a change of organization or reorganization. The Bill “would require a local agency formation commission to consider information or comments from voters or residents of the affected territory and the extent that the proposal will promote environmental justice, as defined, thus creating a state-mandated local program.”
- **California, Senate Bill 532, introduced on February 22, 2007 by Senator Jenny Oropeza (D-District 28). Status: May be Acted Upon on or After March 25, 2007.** The Bill makes technical, nonsubstantive changes to the Oil Transfer and Transportation Emission and Risk Reduction Act of 2002, which contained “legislative findings and declarations relative to the environmental and other effects of the shipment of oil along the California Coast.” The changes were made due to numerous findings of the Legislature, including the fact that current, accessible, and accurate data “regarding oil transportation is critical to having critical information of the potential environmental quality, public health, and environmental justice consequences that must be analyzed by state and local agencies for environmental impact reports and statements, emergency response planning, permit issuance, and air quality mitigation efforts.”
- **California, Senate Bill 826, introduced on February 23, 2007 by Senator Alex Padilla (D-District 20). Status: Read First Time on February 26, 2007.** The Bill requires the California Integrated Waste Management Board in the Resources Agency to “adopt minimum standards to identify and mitigate environmental justice impacts in disproportionately affected communities in which solid waste facilities are located, including providing advance notice regarding permitting or enforcement, and specified mitigation measures.” The Bill provides for special mitigation measures to “reduce or eliminate any disproportionate impacts from solid waste facilities in disproportionately affected communities.”
- **California, Senate Bill 1001, introduced on February 23, 2007 by Senator Don Perata (D-District 9). Status: Read First Time on February 26, 2007.** The Bill would revise provisions of the Porter-Cologne Water Quality Control Act, which “establishes 9 regions for the purposes of the Act, each governed by a California regional water quality control board of 9 members appointed by the Governor, with prescribed experience or associations.” Specifically, the Bill would “establish regional boards of 5 members, with positions for members with a degree

or prescribed experience in biological science, public sector finance, urban planning, public health, and environmental justice.” With regard to the member with environmental justice experience, the Bill further specifies that the person have “preferred knowledge about the impact of water quality on low-income communities.”

- **Illinois, House Bill 1874, introduced on February 23, 2007 by Congresswoman Elaine Nekritz (D-District 57). *Status: Referred to House Environment and Energy Committee on February 27, 2007.*** The Bill creates the Global Warming Response Act and provides that the Illinois Environmental Protection Agency (“IEPA”) is the State agency charged with monitoring and regulating sources of emissions of greenhouse gases. Among other things, the Bill requires that on or before January 1, 2009, the IEPA shall propose and the Pollution Control Board shall adopt rules to require the reporting and verification of statewide greenhouse gas emissions and to monitor and enforce compliance with the program. The Bill was created to meet the Legislature’s intent that IEPA shall consult with State agencies and stakeholder, including the environmental justice community, to implement the global warming pollution reduction targets with minimal costs and maximum benefits. It takes effect immediately.
- **Minnesota, House Bill 1407, introduced on February 26, 2007 by Congresswoman Karen Clark (D-District 61). *Status: Referred to House Health and Human Services Committee on February 26, 2007. Author Added on March 5, 2007. See also Minnesota, Senate Bill 1317, introduced on February 26, 2007 by Senator Linda Berglin (D-District 61). Status: Referred to Senate Finance Committee on February 26, 2007. Author Added on March 5, 2007.*** The companion Bills require the Commissioner of Health to seek funding for environmental justice mapping. Specifically, the Commissioner “shall apply for federal funding to renew and expand the State’s environmental justice mapping capacity . . . to promote public health tracking . . . [and] to explore possible links between environmental health and toxic exposure and to create a system for environmental public health tracking.”
- **Minnesota, House Bill 1621, introduced on March 1, 2007 by Congresswoman Julie Bunn (D-District 56A). *Status: Introduced. Referred to House Committee on Health and Human Services on March 1, 2007. Author Added on March 7, 2007.*** The Bill established an environmental health tracking and biomonitoring program. In setting forth how the program would work, the Bill specified that an Environmental Health Tracking and Biomonitoring Advisory Panel would be formed. Included on the Panel, would be four members from nongovernmental organizations with a focus on, among other things, environmental justice.

- Texas, Senate Bill 945, introduced on February 27, 2007 by Senator Rodney Ellis (D-District 13). *Status: Filed.*** The Bill relates to the Texas Global Warming Solutions Act. The Bill provides, among other things, that the Texas Commission on Environmental Quality (“Commission”) “shall monitor and regulate greenhouse gas emission sources that cause global warming . . . to reduce those emissions.” The Commission shall ensure that any activities undertaken in compliance do not disproportionately impact low-income communities negatively. The Bill imposes fees and provides for a penalty. Also, the Bill requires that the Commission convene an environmental justice advisory committee of at least three members to advise it.
- Vermont, House Bill 463, introduced on February 28, 2007 by Congresswoman Rachel Weston (D-District 3-3). *Status: Introduced.*** The Bill seeks to establish “an environmental justice policy for the State of Vermont and would establish an advisory committee on environmental justice within the agency of natural resources to advise the state on environmental justice issues.” The Bill specifies, among other things, that environmental justice considerations “should be integrated into the State requirements for planning and zoning.”
- Washington, House Bill 1601, introduced on January 24, 2007 by Congresswoman Christine Rolfes (D-District 23). *Status: Passed to House Rules Committee on February 28, 2007.*** The Bill creates the Children’s Environmental Health and Protection Advisory Council. The Council was created based on the finding that “higher rates of poverty place children of ethnic and minority communities at disproportionate risk for environmental exposures due to inadequate housing, poor nutrition, and limited access to health care.” The Council, which will consist of sixteen members, will address these issues and provide a report annually with recommendations to reduce children’s exposure to environmental hazards.
- Wisconsin, Senate Bill 81, introduced on March 6, 2007 by Senator Mark Miller (D-District 16). *Status: Referred to Senate Committee on Environment and Natural Resources on March 6, 2007.*** The Bill provides for the management of emissions of specified greenhouse gases, including carbon dioxide. Greenhouse gases trap heat in the atmosphere. The Bill treats greenhouse gas emissions from the generation of electricity that is generated outside the State but is used in the State as though the emissions occurred in the State. The Bill creates two bodies to advise Wisconsin’s Department of Natural Resources about greenhouse gas management, including the Greenhouse Gas Management Environmental Justice Council (“Council”). The Council will have at least 3 members appointed from nominations “received from environmental justice organizations and community groups, representing communities that have

the most significant exposure to air pollutants, including communities with minority populations and communities with low-income populations.”

- **State Regulatory Alerts.**

- No noteworthy “*State Regulatory Alerts*” were identified for this time period.